

REMARKS

This is intended to be a complete response to the Official Action mailed June 25, 2004, in which claims 1-19 were rejected. Applicants have amended claims 1 and 11 herein to improve their clarity. Claims 4 and 13 have been cancelled without prejudice.

Objection to the Claims

Claims 1 and 11 have been rejected as being inconsistent. The claims have been amended to improve their consistency. Applicant respectfully requests withdrawal of the objections.

Rejection Under 35 U.S.C. §112 ¶2

Claims 4 and 13 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 13 have been cancelled thereby mooted the rejection.

Rejection Under 35 U.S.C. §103(a)

Claims 1-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (EP 0791543 A2).

The rejection is based on the Examiner's assertion that it would be obvious to modify the lower end of the sleeve of Fig. 55 of the Weder reference

by the teachings of the lower end of the sleeve of Fig. 36 of the Weder reference. That is, the lower straight portion of the lower end of the sleeve of Fig. 55 would be made arcuate based on the teachings of the arcuate end of the sleeve of Fig. 36. In the rejection it is stated:

"It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Weder et al. (Fig. 55) by making the single portion arcuate as disclosed by Weder et al. (Fig. 35) so as to meet consumer demand (for example, see col. 19 lines 44-50)."

Further it is noted by the Examiner that column 19, lines 44-50 of the Weder reference state:

"The lower end 172 of the lower portion 162 may be constructed in a variety of configurations. For example, the lower end 172 may have a rounded bottom with a gusseted inverted portion (Figure 20). Figure 21 shows an alternative embodiment in a sleeve 160a having a closed lower end 172a which is rounded without a gusset"

Applicant traverses the rejection.

In the rejection it is stated that the combination of Figs. 55 and 36 would be obvious "to meet consumer demand". However, the only evidence cited by the examiner to support this assertion is the statement in Col. 19, lines 44-45 that the lower end of the sleeve may be constructed in a "variety of configurations".

That the bottom of the sleeve could be constructed in a variety of ways certainly does not provide a motivation or suggestion for making a "specific" configuration such as is claimed herein. Such a combination of Figs. 55 and 36

is at best obvious only in hindsight which the courts have repeatedly stated is an impermissible basis for a rejection under 35 U.S.C. §103.

According to the examiner's reasoning, any new "configuration" of a sleeve bottom would be obvious if the individual components could be found in a reference because there is always a desire "to meet consumer demand". However, desire to meet consumer demand does not in itself lead to the creation of a specific invention.

A desire to meet consumer demand might "stimulate" the inventive process, but it does not necessarily lead to a specific endpoint. If that was true, there would be no non-obvious inventions.

If the Examiner has particular knowledge of the floral industry as to why one would combine the elements at Fig. 55 and 36 of the Weder reference to arrive at the present invention, Applicant respectfully requests an affidavit of the Examiner in accordance with 37 C.F.R. 1.104(d)(2) such that said knowledge can be addressed by the Applicant.

In summary, the Examiner's assertion that the claims are obvious because creation of a "variety of configurations" would be motivated by a "desire to meet consumer demand" does not provide a reasonable suggestion or motivation to combine the elements of Figures 55 and 36 of the Weder reference to arrive at the present invention. The present invention is therefore not prima facie obvious.

Applicant respectfully requests reconsideration and withdrawal of the rejection under §103(a) in view of the above.

Secondary References

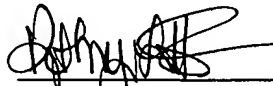
The secondary references have been reviewed and none of them teach the invention as claimed herein.

Conclusion

In view of the above, Applicant respectfully submits the claims are now in a condition for allowance and respectfully request issuance of a Notice of Allowance thereof.

Should the Examiner have any questions regarding the Amendments to the claims or the Remarks contained herein, Applicant's agent would welcome the opportunity to discuss same with the Examiner.

Respectfully submitted,



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